

THIS ORDER IS NOT A  
PRECEDENT OF THE  
TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

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Mailed: September 20, 2017

Cancellation No. 92064514

*Mary P. Flynn*

*v.*

*Donald J. Trump for President, Inc.*

**Before Kuhlke, Adlin, and Heasley,  
Administrative Trademark Judges.**

**By the Board:**

By its order of March 24, 2017, the Board granted Respondent's motion to dismiss and allowed Petitioner time to file and serve an amended petition to cancel that adequately alleges her standing and a valid ground for cancellation (the "Prior Order").<sup>1</sup> Now before the Board is Petitioner's proposed amended petition for cancellation, filed April 14, 2017, against Respondent's registration for the mark MAKE AMERICA GREAT AGAIN in standard character form for goods and services in Classes 16, 25, 26, 35 and 36.<sup>2</sup>

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<sup>1</sup> 13 TTABVUE. Petitioner alleges that the Prior Order failed to address the issue of "proof of service." However, the motion to dismiss contained a proper certificate of service via Federal Express overnight and email and there was no need to address the certificate as Petitioner never alleged she did not receive a copy of the motion. A signed statement in the form of a certificate of service will be accepted as prima facie proof of service. There is no requirement for a party to provide separate proof for Federal Express service.

<sup>2</sup> Registration No. 5020556, registered August 16, 2016 based on Trademark Act § 1(a). The original ESTTA cover sheet lists all of the goods and services in Classes 16, 25, 26, 35 and 36

To withstand a motion to dismiss for failure to state a claim upon which relief can be granted, a plaintiff need only allege sufficient factual matter that, if proved, would allow the Board to conclude, or to draw a reasonable inference, that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for opposing or cancelling the mark. *Doyle v. Al Johnson's Swed. Rest. & Butik Inc.*, 101 USPQ2d 1780, 1782 (TTAB 2012) (*citing Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998)); *see also* TBMP § 503.02 (2017). Specifically, a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Doyle*, 101 USPQ2d at 1782 (*quoting Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). In particular, the claimant must allege well-pleaded factual matter and more than “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Iqbal*, 556 U.S. at 678 (*citing Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

The proposed amended petition for cancellation must comply with Fed. R. Civ. P. 8 and 9 and Trademark Rules 2.112(a) and 2.116(a). That is, it must be simple, concise and direct, and provide a short and plain statement of: (1) the reasons petitioner believes she will be damaged by the registration sought to be cancelled (i.e., petitioner’s standing to maintain the cancellation); and (2) at least one substantive ground for relief (i.e., basis in the Trademark Act why the registration should be cancelled). *See* Fed. R. Civ. P. 8(d)(1); Trademark Rule 2.112(a); *Person’s Co. v. Christman*, 900 F.2d 1565, 14 USPQ2d 1477, 1479 (Fed. Cir. 1990); *Int’l Order of*

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as the classes subject to cancellation. The mark is also registered in Classes 41 and 45, which were not subject to cancellation.

*Job's Daughters v. Lindeburg and Co.*, 727 F.2d 1087, 220 USPQ 1017, 1019 (Fed. Cir. 1984); *Kelly Servs. Inc. v. Greene's Temporaries Inc.*, 25 USPQ2d 1460, 1464 (TTAB 1992); *Am. Vitamin Prods. Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992). All disputed issues are construed in the light most favorable to the pleading party, and all reasonable inferences are drawn in favor of the pleading party. *See Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993). Fed. R. Civ. P. 9(b) provides that the circumstances constituting the alleged fraud shall be stated with particularity. *See In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009).

To sufficiently allege standing within the meaning of Section 14 of the Trademark Act, 15 U.S.C. § 1064, a plaintiff must plead facts sufficient to show that she has a direct and personal stake in the outcome of the proceeding and a reasonable basis grounded in fact for her belief that she will be damaged. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 1401 (2015), *citing Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999).

The proposed amended petition is anything but “short and plain,” as it consists of 205 paragraphs totalling 40 pages. Under the heading “Standing,” Petitioner alleges, among extraneous allegations about the U.S. Constitution, protests, her voting history and other topics:

142. Petitioner is the owner of US Serial Number 87182399 for the mark “CONSCIOUS JUSTICE” for non-profit legal services, which was published in the Official Gazette on March 7, 2017.

143. Petitioner is the CEO and Executive Director of Conscious Justice, which is a non-profit that coordinates legal services for other non-profits, foundations and various other civil or human rights organizations or causes to try to help people to choose to advocate instead of adjudicate. To choose kindness, love, compassion and empathy for humanity over personal ego, fear, anger, hate, violence, greed and apathy. What law firms offer pro bono services? For those that do, for what practice areas do they offer these services? For children or the incarcerated? For minority/female owned businesses? If not, do they offer discounts and/or flat fee or contingency fee billing arrangements? How are conflicts of interest handled at international corporations, law firms, by the President of the US, or by candidates for the office of President of the US? Are candidates for President of the US required to report any pending or past litigation matters on their OGE Form 278e so the US Office of Government Ethics can weigh the ethical (legal and financial) ramifications before they clear conflicts for a candidate for the office of President of the US?

Neither these cited allegations, nor any of the others in the proposed amended petition sufficiently allege standing. Petitioner has not alleged that she is a competitor, or that her mark may be, or has been, denied registration based on Respondent's registration. Indeed, Petitioner acknowledges that her pleaded application has been approved for publication.

Nor has Petitioner alleged any cognizable substantive grounds for relief. Petitioner alleges violation of her "right to privacy" under Trademark Act § 2(a); dilution because the involved mark is "in the public domain;" likelihood of confusion because the involved mark, was "first used by Ronald Reagan in 1980;" and fraud as "the mark at issue is in the public domain, which means Donald Trump had no legal right to attempt to claim trademark protection."<sup>3</sup> The pleaded grounds are very similar to those found insufficient and dismissed by the Prior Order, which provided

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<sup>3</sup> 14 TTABVUE 41-42.

detailed information about the required elements of each of the alleged claims. Petitioner obviously ignored the Prior Order. She has not validly alleged even a likelihood of confusion claim, as Petitioner's mark and Respondent's mark are not in any way similar, do not contain any of the same terms, and are for unrelated services. Petitioner has not alleged any other facts stating a claim for relief that is plausible on its face.

Petitioner has had two chances to sufficiently plead the asserted claims and has failed to do so. Accordingly, because Petitioner has not complied with Trademark Rule 2.112(a), has not sufficiently alleged her standing, and has not sufficiently alleged a valid ground for cancellation, the petition to cancel is **dismissed with prejudice**.

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